

ASSEMBLY BILL

No. 1841

Introduced by Assembly Member Silva

February 22, 2012

An act to amend Section 12305.87 of the Welfare and Institutions Code, relating to in-home supportive services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1841, as introduced, Silva. In-home supportive services providers: criminal exclusions.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Existing law prohibits a person from providing supportive services if he or she has been convicted of specified crimes in the previous 10 years, unless the information or accusation against the person has been dismissed, or he or she has obtained a certificate of rehabilitation, as specified. In addition, existing law authorizes a recipient of services who wishes to employ a provider applicant who has been convicted of a specified offense to submit to the county a prescribed individual waiver, signed by the recipient, or by the recipient's authorized representative, and returned to the county welfare department. Existing law also permits a provider applicant who has been convicted of a specified offense to request from the State Department of Social Services a general exception from exclusion as a potential provider.

This bill would delete the authority of a recipient to submit a waiver for the purpose of employing a person who has been convicted of one of the specified crimes as the recipient's IHSS provider.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12305.87 of the Welfare and Institutions
2 Code is amended to read:
3 12305.87. (a) (1) Commencing 90 days following the effective
4 date of the act that adds this section, a person specified in paragraph
5 (2) shall be subject to the criminal conviction exclusions provided
6 for in this section, in addition to the exclusions required under
7 Section 12305.81.
8 (2) This section shall apply to a person who satisfies either of
9 the following conditions:
10 (A) He or she is a new applicant to provide services under this
11 article.
12 (B) He or she is an applicant to provide services under this
13 article whose application has been denied on the basis of a
14 conviction and for whom an appeal of that denial is pending.
15 (b) Subject to subdivisions ~~(e), (d), and (e)~~ (c) and (d), an
16 applicant subject to this section shall not be eligible to provide or
17 receive payment for providing supportive services for 10 years
18 following a conviction for, or incarceration following a conviction
19 for, any of the following:
20 (1) A violent or serious felony, as specified in subdivision (c)
21 of Section 667.5 of the Penal Code and subdivision (c) of Section
22 1192.7 of the Penal Code.
23 (2) A felony offense for which a person is required to register
24 under subdivision (c) of Section 290 of the Penal Code. For
25 purposes of this paragraph, the 10-year time period specified in
26 this section shall commence with the date of conviction for, or
27 incarceration following a conviction for, the underlying offense,
28 and not the date of registration.
29 (3) A felony offense described in paragraph (2) of subdivision
30 (c) or paragraph (2) of subdivision (g) of Section 10980.
31 (c) Notwithstanding subdivision (b), an application shall not be
32 denied under this section if the applicant has obtained a certificate
33 of rehabilitation under Chapter 3.5 (commencing with Section
34 4852.01) of Title 6 of Part 3 of the Penal Code or if the information

1 or accusation against him or her has been dismissed pursuant to
2 Section 1203.4 of the Penal Code.

3 ~~(d) (1) Notwithstanding subdivision (b), a recipient of services~~
4 ~~under this article who wishes to employ a provider applicant who~~
5 ~~has been convicted of an offense specified in subdivision (b) may~~
6 ~~submit to the county an individual waiver of the exclusion provided~~
7 ~~for in this section. This paragraph shall not be construed to allow~~
8 ~~a recipient to submit an individual waiver with respect to a~~
9 ~~conviction or convictions for offenses specified in Section~~
10 ~~12305.81.~~

11 ~~(2) The county shall notify a recipient who wishes to hire a~~
12 ~~person who is applying to be a provider and who has been~~
13 ~~convicted of an offense subject to exclusion under this section of~~
14 ~~that applicant's relevant criminal offense convictions that are~~
15 ~~covered by subdivision (b). The notice shall include both of the~~
16 ~~following:~~

17 ~~(A) A summary explanation of the exclusions created by~~
18 ~~subdivision (b), as well as the applicable waiver process described~~
19 ~~in this subdivision and the process for an applicant to seek a general~~
20 ~~exception, as described in subdivision (c). This summary~~
21 ~~explanation shall be developed by the department for use by all~~
22 ~~counties.~~

23 ~~(B) An individual waiver form, which shall also be developed~~
24 ~~by the department and used by all counties. The waiver form shall~~
25 ~~include both of the following:~~

26 ~~(i) A space for the county to include a reference to any Penal~~
27 ~~Code sections and corresponding offense names or descriptions~~
28 ~~that describe the relevant conviction or convictions that are covered~~
29 ~~by subdivision (b) and that the provider applicant has in his or her~~
30 ~~background.~~

31 ~~(ii) A statement that the service recipient, or his or her authorized~~
32 ~~representative, if applicable, is aware of the applicant's conviction~~
33 ~~or convictions and agrees to waive application of this section and~~
34 ~~employ the applicant as a provider of services under this article.~~

35 ~~(3) To ensure that the initial summary explanation referenced~~
36 ~~in this subdivision is comprehensible for recipients and provider~~
37 ~~applicants, the department shall consult with representatives of~~
38 ~~county welfare departments and advocates for, or representatives~~
39 ~~of, recipients and providers in developing the summary explanation~~
40 ~~and offense descriptions.~~

~~(4) The individual waiver form shall be signed by the recipient, or by the recipient's authorized representative, if applicable, and returned to the county welfare department by mail or in person. Except for a parent, guardian, or person having legal custody of a minor recipient, a conservator of an adult recipient, or a spouse or registered domestic partner of a recipient, a provider applicant shall not sign his or her own individual waiver form as the recipient's authorized representative. The county shall retain the waiver form and a copy of the provider applicant's criminal offense record information search response until the date that the convictions that are the subject of the waiver request are no longer within the 10-year period specified in subdivision (b).~~

~~(5) An individual waiver submitted pursuant to this subdivision shall entitle a recipient to hire a provider applicant who otherwise meets all applicable enrollment requirements for the In-Home Supportive Services program. A provider hired pursuant to an individual waiver may be employed only by the recipient who requested that waiver, and the waiver shall only be valid with respect to convictions that are specified in that waiver. A new waiver shall be required if the provider is subsequently convicted of an offense to which this section otherwise would apply. A provider who wishes to be listed on a provider registry or to provide supportive services to a recipient who has not requested an individual waiver shall be required to apply for a general exception, as provided for in subdivision (e).~~

~~(6) Nothing in this section shall preclude a provider who is eligible to receive payment for services provided pursuant to an individual waiver under this subdivision from being eligible to receive payment for services provided to one or more additional recipients who obtain waivers pursuant to this same subdivision.~~

~~(7) The state and a county shall be immune from any liability resulting from granting an individual waiver under this subdivision.~~

~~(e)~~

~~(d) (1) Notwithstanding subdivision (b), an applicant who has been convicted of an offense identified in subdivision (b) may seek from the department a general exception to the exclusion provided for in this section.~~

~~(2) Upon receipt of a general exception request, the department shall request a copy of the applicant's criminal offender record information search response from the applicable county welfare~~

1 department. Notwithstanding any other provision of law, the county
2 shall provide a copy of the criminal offender record information
3 search response, as provided to the county by the Department of
4 Justice, to the department. The county shall provide this
5 information in a manner that protects the confidentiality and
6 privacy of the criminal offender record information search
7 response. The state or federal criminal history record information
8 search response shall not be modified or altered from its form or
9 content as provided by the Department of Justice.

10 (3) The department shall consider the following factors when
11 determining whether to grant a general exception under this
12 subdivision:

13 (A) The nature and seriousness of the conduct or crime under
14 consideration and its relationship to employment duties and
15 responsibilities.

16 (B) The person's activities since conviction, including, but not
17 limited to, employment or participation in therapy education, or
18 community service, that would indicate changed behavior.

19 (C) The number of convictions and the time that has elapsed
20 since the conviction or convictions.

21 (D) The extent to which the person has complied with any terms
22 of parole, probation, restitution, or any other sanction lawfully
23 imposed against the person.

24 (E) Any evidence of rehabilitation, including character
25 references, submitted by the person, or by others on the person's
26 behalf.

27 (F) Employment history and current or former employer
28 recommendations. Additional consideration shall be given to
29 employer recommendations provided by a person who has received
30 or has indicated a desire to receive supportive or personal care
31 services from the applicant, including, but not limited to, those
32 services, specified in Section 12300.

33 (G) Circumstances surrounding the commission of the offense
34 that would demonstrate the unlikelihood of repetition.

35 (H) The granting by the Governor of a full and unconditional
36 pardon.

37 ~~(F)~~

38 (e) If the department makes a determination to deny an
39 application to provide services pursuant to a request for a general
40 exception, the department shall notify the applicant of this

determination by either personal service or registered mail. The notice shall include the following information:

(1) A statement of the department's reasons for the denial that evaluates evidence of rehabilitation submitted by the applicant, if any, and that specifically addresses any evidence submitted relating to the factors in paragraph (3) of subdivision ~~(e)~~ (d).

(2) A copy of the applicant's criminal offender record information search response, even if the applicant already has received a copy pursuant to Section 12301.6 or 12305.86. The department shall provide this information in a manner that protects the confidentiality and privacy of the criminal offender record information search response.

(A) The state or federal criminal history record shall not be modified or altered from its form or content as provided by the Department of Justice.

(B) The department shall retain a copy of each individual's criminal offender record information search response until the date that the convictions that are the subject of the exception are no longer within the 10-year period specified in subdivision (b), and shall record the date the copy of the response was provided to the individual and the department.

(C) The criminal offender record information search response shall not be made available by the department to any individual other than the provider applicant.

~~(g)~~

(f) (1) Upon written notification that the department has determined that a request for exception shall be denied, the applicant may request an administrative hearing by submitting a written request to the department within 15 business days of receipt of the written notification. Upon receipt of a written request, the department shall hold an administrative hearing consistent with the procedures specified in Section 100171 of the Health and Safety Code, except where those procedures are inconsistent with this section.

(2) A hearing under this subdivision shall be conducted by a hearing officer or administrative law judge designated by the director. A written decision shall be sent by certified mail to the applicant.

~~(h)~~

1 (g) The department shall revise the provider enrollment form
2 developed pursuant to Section 12305.81 to include both of the
3 following:

4 (1) The text of subdivision (c) of Section 290 of the Penal Code,
5 subdivision (c) of Section 667.5 of the Penal Code, subdivision
6 (c) of Section 1192.7 of the Penal Code, and paragraph (2) of
7 subdivisions (c) and (g) of Section 10980.

8 (2) A statement that the provider understands that if he or she
9 has been convicted, or incarcerated following conviction for, any
10 of the crimes specified in the provisions identified in paragraph
11 (b) in the last 10 years, and has not received a certificate of
12 rehabilitation or had the information or accusation dismissed, as
13 provided in subdivision (c), he or she shall only be authorized to
14 receive payment for providing in-home supportive services under
15 ~~an individual waiver or~~ a general exception as described in this
16 section, and upon meeting all other applicable criteria for
17 enrollment as a provider in the program.

18 (i)

19 (h) (1) Notwithstanding the rulemaking provisions of the
20 Administrative Procedure Act (Chapter 3.5 (commencing with
21 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
22 Code), the department may implement and administer this section
23 through all-county letters or similar instructions from the
24 department until regulations are adopted. The department shall
25 adopt emergency regulations implementing these provisions no
26 later than July 1, 2011. The department may readopt any emergency
27 regulation authorized by this section that is the same as or
28 substantially equivalent to an emergency regulation previously
29 adopted under this section.

30 (2) The initial adoption of emergency regulations pursuant to
31 this section and one readoption of emergency regulations shall be
32 deemed an emergency and necessary for the immediate
33 preservation of the public peace, health, safety, or general welfare.
34 Initial emergency regulations and the one readoption of emergency
35 regulations authorized by this section shall be exempt from review
36 by the Office of Administrative Law. The initial emergency
37 regulations and the one readoption of emergency regulations
38 authorized by this section shall be submitted to the Office of
39 Administrative Law for filing with the Secretary of State and each

1 shall remain in effect for no more than 180 days, by which time
2 final regulations may be adopted.

3 (j)

4 (i) In developing the ~~individual waiver form~~ and all-county
5 letters or information notices or similar instructions, the department
6 shall consult with stakeholders, including, but not limited to,
7 representatives of the county welfare departments, and
8 representatives of consumers and providers. The consultation shall
9 include at least one in-person meeting prior to the finalization of
10 the ~~individual waiver form~~ and all-county letters or information
11 notices or similar instructions.

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